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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of ANDREW J. and
JULIE ANN STOUT.

B281612

(Los Angeles County
Super. Ct. No. BD579228)

ANDREW J. STOUT,

Appellant,

v.

JULIE ANN STOUT,

Respondent.

APPEAL from an order of the Superior Court of
Los Angeles County, Bruce G. Iwasaki, Judge. Affirmed.

Law Office of Breyon J. Davis and Breyon J. Davis for
Appellant.

Lavinsky Law and Emily E. Rubenstein for Respondent.

Andrew J. Stout appeals from an order requiring him to pay his wife, Julie Ann Stout, \$165,000 in need-based attorney and accountant fees pursuant to Family Code section 2030,¹ which provides for an award of attorney fees and costs to ensure each party in a marital dissolution proceeding has access to legal representation. Andrew contends the family law court abused its discretion by failing to fully consider the requisite statutory factors for the award.² We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Prior Request for an Order Awarding Attorney Fees and Costs Under Section 2030

Julie and Andrew were married in May 2009 and separated in February or March 2013. Andrew is a financial advisor employed by an investment banking and financial services company to provide wealth management services to clients. Julie is unemployed. They have no children.

Andrew filed a petition for dissolution of the marriage on March 14, 2013. On December 12, 2013 Julie filed a request for orders awarding temporary spousal support under section 3600 and attorney and forensic accountant fees under section 2030.

On March 6, 2014 the family law court issued its order on Julie's request, addressing, among other issues, Andrew's monthly income of \$7,830 from a \$723,972 "employee forgivable loan" received from his employer in October 2012 before the parties' separation. The court described the employee forgivable

¹ Statutory references are to this code unless otherwise stated.

² We refer to Andrew and Julie by their first names to avoid confusion.

loan as a mechanism for employee compensation that provides a large, upfront payment that guarantees employee loyalty and continuity and reduces tax liability. As explained by the court, “For eight years, each quarter, [Andrew] must repay this loan, but if he remains employed, the loan is forgiven to that extent. This loan forgiveness of \$94,000 per year is reported for tax purposes as income, although no new cashflow is actually received—the parties received the cash in October 2012.” The family law court, agreeing with Andrew, concluded the loan forgiveness amount constituted “phantom income” that was unavailable for spousal support.

Based on Andrew’s remaining income and other factors, the court ordered Andrew to pay \$4,000 per month in temporary spousal support until November 30, 2015. It also awarded Julie \$47,000 for attorney and accountant fees pursuant to section 2030, which Andrew subsequently paid.

2. The March 6, 2017 Request for an Order Awarding Attorney Fees and Costs Under Section 2030

On March 6, 2017 Julie filed a request for an additional award of \$175,000 pursuant to section 2030: \$100,000 for attorney fees and costs anticipated to be incurred through trial and \$75,000 for forensic accountant fees. In support of her request Julie filed a declaration stating she was completely disabled and suffered from a rare disorder as a result of complications from an ineptly performed surgery, which required additional surgical procedures. She explained she had been receiving disability benefits of \$6,250 per month, which was her

sole source of income in 2016.³ She stated she had only \$5,000 in cash and access to no other assets and asserted she had to use her disability income to pay for numerous major house repairs that required immediate attention and that Andrew refused to pay. She had also incurred more than \$25,000 in the prior year in medical expenses not covered by insurance.

According to Julie, Andrew had failed to make complete disclosure regarding his finances. For example, Andrew had refused in discovery to disclose information about his book of business, an asset in which Julie claimed an interest, resulting in the imposition of evidentiary, issue and monetary sanctions against him.⁴ Julie also claimed Andrew had misappropriated community funds since their separation, including withdrawing without her consent more than \$400,000 from one of their accounts, and asserted he had removed a large volume of business records from their home, which he refused to produce in discovery.

Julie attached to her declaration, among other exhibits, copies of past statements from Andrew's multiple retirement accounts, with balances totaling well over \$240,000. The total amount of these balances did not include the sums held by Andrew in a variety of other accounts: his checking and savings

³ In addition to her personal declaration, Julie filed an income and expense declaration on March 6, 2017 to support her request for attorney fees and costs. Andrew did not designate Julie's income and expense declaration for inclusion in the appellate record.

⁴ During Julie and Andrew's marriage Andrew was responsible for the management of between \$45 million and \$77 million of client assets.

accounts, annuity and deferred compensation accounts and the 401(k) plan held by his current employer.

Julie's request for attorney fees and costs also included the declaration of her forensic accountant, which attached a summary of the accountant's professional qualifications, detailed the accounting services provided, including cash flow and asset valuation analyses, and provided an estimate of the additional work needed to be performed to prepare the case for trial.

Finally, the request was supported by the declaration of Julie's attorney, Jennifer Skolnick, who provided a summary of her legal background, experience and professional credentials, as well as a description of the legal services she performed; explained the complexity of the action, which, according to Skolnick, required analysis of sophisticated financial issues and which was rendered more difficult by Andrew's misappropriation of funds, failure to disclose information, violation of court orders and general lack of cooperation during the litigation; detailed the issues requiring additional discovery and forensic accounting work; and provided an estimate of the additional legal services reasonably and necessarily required through trial. Skolnick stated her hourly billing rate was initially \$500 but was subsequently reduced to \$400 as a result of Julie's limited financial resources. Skolnick attached to her declaration a copy of her invoices.

3. Andrew's Opposition, Julie's Reply and Andrew's Supplemental Papers

On March 13, 2017 Andrew filed an opposition to Julie's request for an order, supported by his declaration. Andrew contended the standard under section 2030 for awarding attorney fees was not met because, after subtraction of expenses, Julie's

remaining income exceeded his and because Julie's counsel was more expensive than his own.⁵ He argued Julie provided no proof she had actually incurred the expenses listed on her income and expense declaration. He also claimed Julie had the financial ability to pay reasonable attorney fees and the amount of the fees sought was not necessary to efficiently and expeditiously handle the matter. He further argued Julie had failed to mitigate her situation by staying at the marital residence even though the house could have been sold and the sale proceeds held in an escrow account to fund the parties' litigation.

In his declaration in support of his opposition, Andrew explained the sum he withdrew from a community property account totaling more than \$400,000 was the remaining balance on an employee forgivable loan with an eight-year term, which he repays on a monthly basis without any assistance from Julie. He contended Julie had spent the other half of the loan proceeds in less than a year on daily shopping excursions to luxury stores. According to Andrew, at the time of their separation, he and Julie had a combined debt of more than \$1.4 million from employee forgivable loans. He stated he is the sole person paying the secured loan and property taxes on the home. He claimed, after paying the loan on the house at which Julie is staying rent-free, real property and health insurance, his apartment rent, his living expenses and the employee forgivable loan repayments, he has no income left.

On March 17, 2017 Julie filed a reply, supported by additional declarations from her and Skolnick, which disputed

⁵ In his declaration accompanying the opposition Andrew stated his attorney, Breyon Davis, charged an hourly billing rate of \$300.

numerous statements in Andrew's declaration, including the monthly home loan amounts he claimed to pay, and explained Julie was unable to comment on Andrew's other claimed income and expense items because he had failed to file an income and expense declaration with his response. That same day Andrew filed a supplemental declaration and an income and expense declaration, which set forth his claimed income, expenses and assets and attached a copy of his pay stubs for the period January 1, 2017 to February 28, 2017.

According to Andrew's income and expense declaration, his actual gross income in the preceding month was \$30,055 (comprising \$3,640 in gross "salary or wages" listed in item 5a and \$26,415 in "[c]ommissions or bonuses" listed in item 5c), with an average gross monthly amount of \$32,862. He claimed total monthly expenses of \$38,914, which included monthly loan repayment amounts for several employee forgivable loans. He stated he had deposit accounts totaling \$1,200; he possessed no stocks, bonds or liquid assets; and the net valuation of all his other real and personal property was negative. He failed to fill out items 15a and 15c of the income and expense declaration requesting the amount of fees and costs paid to his attorney to date and the amount of fees and costs he still owed.

4. The Hearing on the Request for an Order Awarding Attorney Fees and Costs

On March 22, 2017 the family law court held a hearing on Julie's request for attorney fees and costs.⁶ The court requested

⁶ The court stated Andrew's income and expense declaration was filed "pretty late," "right on the border there of where I could . . . not consider it."

clarification from Andrew's attorney, Breyon Davis, regarding Andrew's claimed monthly income as shown on his income and expense declaration. Davis agreed with the court that, while item 5c of the income and expense declaration form combines bonus and commission amounts into one line, the amounts are divided into separate categories on Andrew's pay stubs. Davis explained the employee loan forgiveness amounts are listed on Andrew's pay stubs under the description "Bonus—Retail" (as opposed to under the description "Commission"). She affirmed the court's understanding the \$26,415 amount listed as income in item 5c, derived from a February 2017 pay stub, reflects Andrew's commissions, not any loan forgiveness (bonus) amounts.

The court also requested clarification regarding Andrew's claimed monthly expenses attributable to repayment of his employee forgivable loans. Davis confirmed the family law court's understanding that, of the \$39,000 in Andrew's total monthly expenses listed on his income and expense declaration, about \$23,000 was for Andrew's claimed repayment of the employee forgivable loans. Davis further agreed Andrew was not actually making any payments on the employee forgivable loans because the monthly repayment amounts are forgiven for every month that Andrew works for his employer.

The court stated its inclination was to conclude Andrew's claimed expenses listed on his income and expense declaration were not legitimate. It also stated it had "real doubts" the total of Andrew's accumulated assets was only \$1,200.

In addition, the court inquired into the reasonableness of the fees requested by Julie's forensic accountant and attorney. Skolnick explained Andrew's failure to cooperate during

discovery greatly contributed to the duration and expense of the litigation. She also told the court the forensic accountant had been working on the case for three years, evaluating a variety of complex issues. The court also requested information from Skolnick regarding her estimates of the number of witnesses and estimated length of the trial.

5. The Court's Order Awarding Attorney Fees and Costs

On March 24, 2017 the family law court issued its ruling, stating, as had been clarified at the hearing, Andrew's claimed expenses for employee forgivable loans were not payments actually made by Andrew. Accordingly, the court did not include any amounts attributable to repayment of the employee forgivable loans in considering Andrew's monthly expenses.

The court found Andrew's income and expense declaration to be "filled with inconsistencies and omissions." For example, the court noted Andrew had failed to include his book of business or retirement accounts among his assets, including retirement accounts that in previous disclosures exceeded \$200,000. Expressly relying on section 2032, subsection (c), which provides attorney fees and costs may be awarded from any type of property, the court stated it is "certainly possible" Andrew could be ordered to pay fees from his retirement accounts. In addition, although Andrew asserted in his income and expense declaration he spends \$1,500 monthly on savings and investments, he nevertheless claimed in the same document to have only \$1,200 in total assets, a fact the court found "peculiar." The court also observed that Andrew had failed to disclose the amount he had paid in attorney fees, as required by item 15a of the income and expense declaration.

The court acknowledged section 2030 requires a finding, among others, that “[t]he attorney’s fees and costs requested are just and reasonable based on the factors described in Family Code section 2032.” The court considered both parties’ finances, including their expenses, and declared, “The ‘big picture’ here is that [Andrew] makes a significant income, and [Julie] is unable to work and receives disability payments.” It also took into consideration the fact Andrew “has been less than forthcoming in his disclosures.” In addition, the court in its order addressed the reasonableness of the attorney and accountant fees requested in light of the issues to be tried and the length of the parties’ trial estimates.

In conclusion, the court found (1) “there is a significant disparity in access to funds to retain and maintain counsel that favors” Andrew; (2) Andrew “is reasonably likely to have the ability to pay the reasonable professional expenses of” Julie; and (3) “a reasonable amount of attorney’s fees for [Julie’s] counsel to complete trial is \$100,000,” and “a reasonable amount to pay forensic accountants to complete their analysis and present evidence at trial is \$65,000.”

DISCUSSION

1. Standard of Review

“On appeal, we review an attorney fee award under section 2030 for an abuse of discretion.” (*In re Marriage of Smith* (2015) 242 Cal.App.4th 529, 532; see *In re Marriage of Sullivan* (1984) 37 Cal.3d 762, 768-769 (*Sullivan*) “[A] motion for attorney fees and costs in a dissolution proceeding is left to the sound discretion of the trial court. [Citations.] In the absence of a clear showing of abuse, its determination will not be disturbed on appeal”].) The appellant bears the burden of proof to establish

the trial court abused its discretion. (*Chalmers v. Hirschkop* (2013) 213 Cal.App.4th 289, 299.) “Applying the abuse of discretion standard, we consider de novo any questions of law raised on appeal, but will uphold any findings of fact supported by substantial evidence.” (*Smith*, at p. 532.)

In determining whether the family law court’s decision is supported by substantial evidence, “the appellate court will ‘consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.]’ [Citation.] We may not reweigh the evidence and are bound by the trial court’s credibility determinations.” (*In re Marriage of Ciprari* (2019) 32 Cal.App.5th 83, 94.)

Under the abuse of discretion standard, “[t]he trial court’s order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made.” (*Sullivan, supra*, 37 Cal.3d at p. 769; see *In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 406.) The court’s order “is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; see *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) In addition, we will not reverse by reason of any error by the trial court unless the record shows the error was prejudicial and a different result would have been probable absent the error. (*In re E.M.* (2014) 228 Cal.App.4th 828, 852; *In re Marriage of Steiner & Hosseini* (2004) 117 Cal.App.4th 519, 525-528, 530.)

2. *Governing Law*

Section 2030, subdivision (a)(1), provides: “In a proceeding for dissolution of marriage . . . the court shall ensure that each party has access to legal representation . . . to preserve each party’s rights by ordering, if necessary based on the income and needs assessments, one party . . . to pay to the other party, or to the other party’s attorney, whatever amount is reasonably necessary for attorney’s fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.” When a party requests attorney fees and costs under section 2030, the family law court “shall make findings on whether an award of attorney’s fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties.” (§ 2030, subd. (a)(2).) “If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney’s fees and costs.” (*Ibid.*)

Section 2032, subdivision (a), further provides the court may make an award of attorney fees and costs under section 2030 where both the making and the amount of the award are “just and reasonable under the relative circumstances of the respective parties.” A determination of “what is just and reasonable under the relative circumstances” involves the consideration, “to the extent relevant,” of the circumstances of the parties described in section 4320. (§ 2032, subd. (b).) The “court considers the respective needs and incomes of the parties” and “may consider all the evidence concerning the parties’ income, assets and abilities.” (*Sullivan, supra*, 37 Cal.3d at p. 768.) An award of attorney fees and costs may be ordered “from any type of

property, whether community or separate, principal or income.” (§ 2032, subd. (c); see Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2018) ¶ 14:165 [“the parties’ ‘relative circumstances’ must reflect consideration of *all available* sources from which fees could be paid,” including liquid and illiquid assets; the court may even require a party to borrow money under appropriate circumstances].)

“Financial resources,” however, “are only one factor for the court to consider.” (§ 2032, subd. (b).) “[I]n determining whether to award attorney fees to one party, the family court may consider the other party’s trial tactics.” (*In re Marriage of Sorge* (2012) 202 Cal.App.4th 626, 662.)

3. *The Family Law Court Did Not Abuse Its Discretion in Awarding Attorney Fees and Costs Under Section 2030*

a. *The family law court considered the statutory factors*

Andrew contends the family law court abused its discretion by failing to “fully consider” the statutory factors for an award of fees and costs under section 2030. However, Andrew fails to identify any factors the court failed to properly consider. To the contrary, the record shows the court performed a thorough assessment of the parties’ relative circumstances, including their respective incomes and needs. It also considered, as it was authorized to do, Andrew’s bad faith discovery tactics. Based on its in-depth review of the relevant facts, the family law court made express findings that there was a disparity in access to funds to retain counsel favoring Andrew, that Andrew had the ability to pay for Julie’s legal representation and that the amounts of attorney and accountant fees awarded were reasonable.⁷

⁷ As discussed, section 2030 requires a finding that Andrew is able to pay for legal representation of both parties, not just Julie. As observed by the family law court in its order, however, Andrew failed to disclose the amount of attorney fees he had incurred to date, a disclosure required by law (see Cal. Rules of Court, rule 5.427(d)). Andrew thus precluded the court from strictly complying with this aspect of section 2030. Andrew has not raised this issue on appeal. (See generally *Hasson v. Ford*

b. *Andrew has forfeited any argument requiring consideration of Julie's financial circumstances*

Rather than explaining what statutory factors he contends were not considered by the family law court, Andrew attempts to support his argument for reversal of the fee award by claiming his monthly expenses exceeded his monthly income and repeating the arguments he presented to the family law court regarding the legitimacy of Julie's expenses and her ability to pay her own legal fees. In essence, Andrew contends the family law court's findings were not supported by substantial evidence.

As explained, the court's findings must be predicated on a consideration of both parties' circumstances. Andrew, however, failed to include Julie's income and expense declaration in the record on appeal,⁸ and his appellate brief does not discuss the material evidence presented by Julie regarding her limited income and ongoing expenses. Andrew has forfeited his arguments pertaining to the court's findings regarding the disparity in the parties' access to funds, as well as any other issue requiring comparison to, or consideration of, Julie's circumstances. (See, e.g., *Maria P. v. Riles* (1987) 43 Cal.3d 1281,

Motor Co. (1982) 32 Cal.3d 388, 420 ["plaintiffs are estopped to complain of the trial court's error because they participated in its commission"].)

⁸ Although Julie's personal declarations provide some information regarding her financial resources, they do not contain all the information required by an income and expense declaration and are not a substitute for the one she filed with the court. For example, Julie's personal declarations provide neither the total amount of her obligations nor the monthly amounts of her expenses, which are both required by items 13 and 14 on the income and expense declaration (form FL-150).

1295-1296 “[i]t is the burden of the party challenging the fee award on appeal to provide an adequate record to assess error”; appellants’ claim “must be resolved against them” because they failed to provide an adequate record on appeal]; *569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 434, fn. 9 [“if the record on appeal does not contain all of the documents or other evidence considered by the trial court, a reviewing court will ‘decline to find error on a silent record, and thus infer that substantial evidence’ supports the trial court’s findings”]; *Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309, 317 [“When appellants challenge the sufficiency of the evidence, all material evidence on the point must be set forth and not merely their own evidence. [Citation.] Failure to do so amounts to waiver of the alleged error”].)

c. *Andrew has failed to establish the family law court abused its discretion with respect to issues that entail consideration of Julie’s finances*

Independent of the issue of forfeiture, Andrew’s arguments regarding Julie’s financial circumstances lack merit. First, Andrew contends Julie has the ability to pay her own reasonable attorney fees. Whether or not the record could arguably support Andrew’s contention, a need-based fees award may be proper even if the party requesting fees can pay her own attorney fees. (See § 2032, subd. (b) [“[t]he fact that the party requesting an award of attorney’s fees and costs has resources from which the party could pay the party’s own attorney’s fees and costs is not itself a bar to an order that the other party pay part or all of the fees and costs requested”]; *In re Marriage of Ciprari, supra*, 32 Cal.App.5th at p. 111 [“section 2032 authorizes a need-based fee award even if [the party requesting the award] could pay her

own attorneys' fees"].)

Andrew also argues the fees award is unreasonable because Julie's attorney is more expensive than his own. An attorney fees award, however, may be proper even if the fees of the party requesting the award exceed those of the other party. (See *In re Marriage of Schleich* (2017) 8 Cal.App.5th 267, 295.)⁹

Andrew also claims Julie provided no proof she actually incurred the expenses reported on her income and expense declaration. Andrew provides no legal authority for his contention additional proof was required. Indeed, he cannot. (See *In re Marriage of McQuoid* (1991) 9 Cal.App.4th 1353, 1359 ["[i]ncome and expense declarations standing alone without oral testimony are a sufficient basis for an order"].) Moreover, his assertion is disingenuous, as the record shows Andrew failed to provide separate proof of all expense items claimed on his income and expense declaration.

Finally, Andrew contends Julie failed to mitigate her

⁹ Moreover, as the family law court found, Andrew had been "less than forthcoming" regarding his finances during the litigation. The amount of fees awarded by the court may be warranted by Andrew's bad faith litigation conduct. (See *In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 166-168 [affirming award of \$750,000 attorney fees to the wife because the record "reveals a case of stunning complexity, occasioned, for the most part, by husband's intransigence"]; *In re Marriage of Kozen* (1986) 185 Cal.App.3d 1258, 1264 [affirming family law court's fee award to wife even though amount of her attorney fees was concededly "obscene" where the husband's "stonewalling" and lack of cooperation in discovery, as well as the wife's reasonable mistrust of the husband's representations regarding his assets, contributed to the amount of accountant and attorney fees incurred].)

situation by continuing to reside in the marital property when the house could have been sold and the sale proceeds used to fund the litigation. Once again, Andrew has failed to support his argument with legal authority or citation to the record. (See *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [“An appellant must provide an argument and legal authority to support his contentions. . . . When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived”]; *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115 [“[i]f no citation ‘is furnished on a particular point, the court may treat it as waived’”].)

d. *Andrew has failed to establish the family law court prejudicially erred in calculating his income*

Finally, Andrew contends his monthly expenses exceed his monthly received income by \$2,000 and the family law court abused its discretion in finding he had the ability to pay Julie’s attorney and accountant fees. Specifically, Andrew insists the court did not understand a large portion of his income is “phantom income” because the amounts must be used to repay his employee forgivable loans.

Andrew fundamentally misperceives the record. As discussed, his attorney admitted at the March 22, 2017 hearing that Andrew did not actually make monthly payments on the employee forgivable loans; rather, the amount due is forgiven by his employer for each month he remains with the company. Similarly, Andrew’s monthly income as shown in his March 2017 income and expense declaration did not include any so-called phantom income amounts attributable to his employer’s loan forgiveness. Andrew’s pay stubs show, and his attorney at the

March 22 hearing confirmed, none of the monthly income amounts listed on Andrew's income and expense declaration is attributable to his employer's loan forgiveness. Thus, the family law court did not err in correspondingly refusing to include among Andrew's monthly expenses any of his purported employee forgivable loan repayment amounts.

Andrew also argues the family law court erred by failing to consider as an expense item the taxes he paid for the employee forgivable loans. The only evidence cited by Andrew to support this claim is the February 2017 pay stubs attached to his income and expense declaration. However, those pay stubs do not indicate that any taxes attributable to his employee forgivable loans (as opposed to other income tax deductions) were deducted from his monthly salary for the relevant reporting period (that is, February 1, 2017 to February 28, 2017).

In any event, even if, as Andrew contends, his expenses exceeded his income if amounts attributable to his employee forgivable loans had been correctly evaluated, the family law court found the sum awarded to Julie could be paid from Andrew's assets. The court rejected as not credible Andrew's claim of only \$1,200 in assets. Instead, relying, at minimum, on the evidence of Andrew's retirement accounts provided by Julie, the court found Andrew's assets exceeded \$200,000 and thus could be used as the source of payment for Julie's fees and costs. Substantial evidence supports this determination. Accordingly, any error by the family law court in calculating Andrew's income was harmless.

DISPOSITION

The March 24, 2017 order is affirmed. Julie is to recover her costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

FEUER, J.